

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL APPEAL No. 56 of 1991****For Approval and Signature:****HONOURABLE MR.JUSTICE S.R.BRAHMBHATT**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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P C TRIVEDI - Appellant**Versus****RASIKBHAI MASUBHAI & 1 - Respondents**

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Appearance :

MR MG NAGARKAR for Appellant:

MS RUKHSANA M PATHAN for Respondent: 1,

Mr. M.A. PATEL, LD. APP for Respondent: 2.

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT**Date : 01/12/2006****ORAL JUDGMENT**

1. The Ahmadabad Municipal Corporation, through its
Food Inspector - Appellant has preferred this
appeal under Section 378 of the Criminal

Procedure Code, 1973 (hereinafter referred to as the "Code" for brevity), challenging the judgment & order of acquittal dated 9/2/1990 passed by learned Metropolitan Magistrate, Court No.8, Ahmedabad, acquitting the accused / respondent of the charge of commission of offence under Section 16 (1) (a) (i) and 7 of the Prevention of Food Adulteration Act, 1954 in Criminal Case No. 368 of 1987 (hereinafter referred to as the "PFA Act" for brevity). This Court (Coram: K.J. Vaidya, J) granted special leave and admitted the appeal on 31/1/1991.

2. The brief facts leading to filing of this appeal deserve to be set out as under:

The original complainant Food Inspector while discharging his duty as such visited the premises of the accused on 5/9/1986 at around 5.15 p.m. in the evening and collected sample of groundnut oil (Singtel) from the original accused / respondent for having it tested by Public Analyst. The procedure for collecting sample was followed in presence of the panch witness. The requisite notice of his intention to collect the sample for analysis under Rule 12 in Form no.6 came to be issued. The panchnama was drawn and as the sample food article was found to be adulterated by the Public Analyst, requisite sanction under the PFA Act came to be obtained for lodging complaint against the accused for commission of offence under section

7 and 16 of the PFA Act from Deputy Municipal Commissioner (Admn.). The concerned Dy. Municipal Commissioner had accorded his sanction. The signature of the sanctioning authority was identified by the food inspector. The complaint came to be lodged which came to be registered as Criminal Case no. 368 of 1987. The copy of the report of Public Analyst along with notice under section 13 (2) came to be issued to the accused so as to enable him to avail an opportunity of requesting the concerned court for sending remaining part of sample to the Central Food Laboratory for further analysis. The said notice appears to have been received by the accused. The accused was summoned, who pleaded not guilty and claimed to be tried. After recording evidence of the prosecution the statement of the accused came to be recorded under section 313 of the Code wherein also accused denied case of the prosecution. The trial court after recording prosecution case came to the conclusion that due to reasons recorded in the judgment and especially on the basis of infirmity in the sanction for sanctioning prosecution the accused was required to be acquitted and accordingly he was acquitted vide order dated 9/2/1990, which is impugned in the present appeal.

3. Shri. Nagarkar, learned counsel for the appellant has submitted that the sanction can not be said to be erroneous only on account of

erroneous finding that proper papers were submitted before the competent authority. Shri. Nagarkar has submitted that the trial court has erred in coming to the conclusion that sanction was not validly issued. The trial court's reasoning that in the sanction letter it does not contain words that it was issued in the "interest of public" but the same was not to be treated as invalid. The trial court has erroneously come to the conclusion that sanction was vague and therefore same was defective. Shri. Nagarkar has submitted that the finding of the trial court is otherwise also erroneous and therefore, same deserves to be quashed and set aside as the adulteration in sample food article is clearly mentioned by the Public Analyst in the report. Therefore the accused deserved to be convicted and punished in accordance with law.

4. Ms. Pathan, learned counsel for the respondent no.1/original accused has submitted that, this being an acquittal appeal, the finding and reasoning of the trial court if not demonstrated to be perverse, same can not be interfered with in appeal under section 378 of the Code. Ms. Pathan has submitted that the sample in question was collected way back on 5/9/1986. The time lapse from the date of collecting sample and till the matter is being decided deserve to be borne-in-mind while examining the judgment and order of acquittal impugned in this appeal. She has further submitted that the reasoning of the

trial court can not be said to be perverse so as to result into miscarriage of justice. The finding and order of acquittal appears to be just and proper and therefore same deserve to be sustained. The trial court has in fact recorded that the letter of sanction does not carry any specific mentioning of Shri. Banerjee who has accorded sanction under section 20 of the Act, was permitted to accord sanction by the competent authority. This finding is based upon the material available on record. The order of acquittal therefore can not be disturbed in the acquittal appeal subsequently. Ms. Pathan has submitted that the trial court also discussed the infirmities in the case of the prosecution which also this Court may be taken into consideration while examining the plea of appellant under section 378 of the Code. Ms. Pathan has submitted that the notification where under the sanctioning authority is purported to have derived power to accord sanction for lodging prosecution against respondent is conspicuously absent in the record of the case. In absence of any notification the finding of the trial court can not be assailed in the present appeal.

5. Shri. Nagarkar has shown to this court notification dated 1/8/1986. It deserves to be noticed that it has come from the appellant side for the first time so far as this appeal is concerned. In this notification also it is

mentioned that the Gujarat Government in General Administration Department has placed services of R. Banerjee, IAS, Collector of Dangs at the disposal of Urban Land & Urban Housing Department for appointment as Deputy Municipal Commissioner vice Shri. B. Guja, IPS. This notification appears to have been referred to by this Court (Coram: D.P. Buch, J) in Criminal Appeal No. 995 of 1993 wherein this Court has observed as under:-

“ Para.No.8: In order to appreciate the aforesaid contention raised on behalf of the contesting respondent, it would be necessary to refer to the provisions made in Section 20 of the said Act. It can be referred for ready reference as follows;

20: “Cognizance and trial of offences. - (1) [No prosecution for an offence under this Act, not being an offence under Section 14 or Section 14-A] shall be instituted except by, or with the written consent of, [the Central Government or the State Government or a person authorised in this behalf, by general or special order, by the Central Government or the State Government].

Provided that a prosecution for an offence under this Act may be instituted by a purchaser [or recognized consumer association] referred to in Section 12, if he [or it] produces in court a

copy of the report of the public analyst along with the complaint.

[(2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence under this Act.

(3)Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (92 of 1974) , an offence punishable under sub-section (1-AA) of Section 16 shall be cognizable and non-bailable}"

9. On an analysis of Section 20 of the said Act, it becomes clear that no offence punishable under Section 16 of the said Act can be instituted, except by or with the written consent of the Central Government or the State Government or a person authorized by general or special order of the Central Government or the State Government.

10. This would mean that before a prosecution could be launched for an offence punishable under Section 16 of the said Act, a valid consent of an authorized officer is required. In the present case, we find that the sanction has been accorded by Mr. R. Banerjee, who happens to be the Dy. Commissioner of Municipal Corporation of the City of Ahmedabad. The said sanction has

been produced as accorded below the complaint itself.

11. Thus, we can, refer to Ex. 19, which according to the case of the appellant, is an authority authorizing Mr. R. Banerjee to accord sanction for the prosecution of the present respondents. Exh. 19, really speaking, is an order dated 01/08/86 of the Government of Gujarat in General Administration Department stating that Shri R Banerjee is transferred and his services are placed at the disposal of the Urban Development and Urban Housing Department for appointment as Dy. Commissioner, Municipal Corporation, Ahmedabad City.

12. Now, there is no further notification on record, to show that the said Urban Development and Urban Housing Housing Department of the Government of Gujarat had appointed Mr. R Banerjee as a Dy. Commissioner of the Municipal Corporation of Ahmedabad City.

13. Apart from the said position, let us take it for granted, that Mr. R. Banerjee was really appointed as Dy. Commissioner, Municipal Corporation. Then also there is no further evidence on record, to show that the State Government or even the Central Government had appointed Mr. R. Banerjee as an Officer to sanction the prosecution of the contesting

respondent. "

6. Ms. Pathan has submitted that, in view of this, in the instant case when the notification itself which has been shown to the Court during hearing of the appeal can not be relied upon for assailing the finding of infirmity in the sanction recorded by the trial court. Ms. Pathan has further submitted that assuming for the sake of submission that the notification is there and Shri. Banerjee came to be appointed as Dy. Municipal Commissioner, but in absence of specific notification authorising Shri. Banerjee in particular or Dy. Municipal Commissioner in general, issued by the State Government under Section 20 of the PFA Act, the finding of infirmity in the order of sanction can not be disturbed at this stage in the acquittal appeal after lapse of about 16 years, and she submits that the impugned order therefore need not be disturbed.

7. This Court perused records and proceedings and heard learned counsels of the parties at length. This Court is of the view that the sanction can not be said to be invalid only on account of absence of holding that same was issued in the interest of public. Time and again this Court has held that the absence of so called sanction has been issued after lodging prosecution in the interest of public in itself would not render same invalid or infirmity so as to vitiated case

of the prosecution. But in the instant case the fact of absence of notification appointing Shri. Banerjee and or Dy. Municipal Commissioner to be competent authority to accord sanction under section 20 of PFA Act deserve to be viewed in its proper perspective. The infirmity recorded by the trial court with regard to non production of the copy of memorandum and non appearing of the name of the food inspector on the sample bottle would also go to show the order of acquittal impugned in the present appeal needs no interference after lapse of 16 years. The non production of the document and or notification before the trial court during the trial showing that the authority who has accorded sanction for lodging prosecution against respondent even if it is there or available, then also same can not be made basis for reversing the finding in appeal under section 378 of the Code after lapse of about 16 years, as it would not be in the interest of justice. In view of totality of the facts & circumstances, and in view of the fact that the appellant have even today failed to show any notification authorizing the concerned officer by name or designation to accord sanction under section 20 of the PFA Act, the findings recorded as such by the trial court whereupon the impugned acquittal is passed, need not be disturbed. It deserves to be noted at this stage that the order of this Court (Coram: D.P. Buch, J) dated 14/2/2003 in Criminal Appeal No. 995 of 1993 has not been assailed by the appellant and it was specifically inquired of

the counsel of the appellant, and the answer is that the same has attained finality as it has not been assailed.

8. In view of these facts & circumstances, this Court is of the considered view that the order of acquittal needs no interference under Section 378 of the Criminal Procedure Code. The appeal, therefore, deserve to be dismissed and is accordingly dismissed.

[S.R. BRAHMBHATT, J]

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